UNITED NATIONS

CCPR

International covenant on civil and political rights

Distr.
GENERAL

CCPR/C/SR.1070
16 July 1991

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-second session

SUMMARY RECORD OF THE 1070th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 11 July 1991, at 3 p.m.

Chairman: Mr. POCAR

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Second periodic report of Morocco (continued)

Organizational and other matters (continued)

General comment on article 7 of the Covenant

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.91-16628/3366B

The meeting was called to order at 3.25 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Morocco (CCPR/C/42/Add.10) (continued)

1. The CHAIRMAN informed the members of the Committee that the Ambassador of Morocco was still awaiting instructions from his Government with regard to the discussion of the report before the Committee, and had requested that he should be allowed more time for that purpose. He therefore suggested that the Committee should postpone consideration of the report of Morocco until the following meeting.

2. Mr. PRADO VALLEJO, Mr. SADI, Mr. AGUILAR URBINA, Mr. MYULLERSON and Mr. FODOR endorsed the Chairman's suggestion.

3. The Chairman's suggestion was approved.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

General comment on article 7 of the Covenant (CCPR/C/42/CRP.2)

4. The CHAIRMAN asked Mr. Aguilar Urbina, Chairman/Rapporteur of the Working Group under article 40 of the Covenant, to present the Group's recommendation for a general comment on article 7 of the Covenant (CCPR/C/42/CRP.2).

5. Mr. AGUILAR URBINA said that the recommendation by the Working Group basically followed the draft general comment on article 7 of the Covenant presented in New York at the previous session. A paragraph-by-paragraph examination ought not to be necessary, as in drafting the recommendation the Working Group had taken account of the observations made by members at the New York session.

6. Mrs. HIGGINS asked for clarification as to whether the general comment before the Committee was intended to supplement the existing general comment on article 7 (general comment 7 [16]) or whether it constituted a revised version. She pointed out that if it was not merely a supplement it was vital to incorporate into it everything of value contained in the existing general comment. It was most important that the Committee should not appear to be watering down any observations it had already made in its general comments.

7. Mr. AGUILAR URBINA said that, as he saw it, the general comment on article 7 was intended to supplement the earlier one.

8. Mr. MYULLERSON said that his impression too was that the new general comment was intended to supplement the existing one. If, on the other hand, it was intended that it should replace the existing general comment, it was necessary to correlate the two, as there were many points in the earlier draft that also appeared in the recommendation before the Committee.

9. Mr. ANDO regretted that it had not been decided at the outset whether the new general comment was to be a supplement to or a revision of the earlier one. In his view, the understanding of the majority of the members of the Committee was that the new general comment was intended as a supplement to the previous one. If it went beyond that, it would have to be carefully integrated with the earlier one.

10. The CHAIRMAN said that it was important to decide on the status of the new general comment before beginning consideration of the recommendation. While there were advantages in a consolidated text, the earlier text had probably been referred to in the Committee's work, and for that reason it should perhaps be retained as it stood. He personally was in favour of regarding the new text as a supplement to the earlier general comment.

11. Mrs. HIGGINS said that she had understood that the intention was to update the earlier text, i.e. to provide something additional to it. However, there were some issues on which the Committee had established a position of principle, for example the question of solitary confinement, of which she could find no mention in the Working Group's recommendation. It was important meticulously to compare the two texts.

12. Mr. WENNERGREN noted that there was a considerable amount of overlapping between the two texts. He himself believed Miss Chanet had intended that the new general comment should replace the original and he had approached it in that light. However, the Committee could use its discretion to decide how to treat the new general comment and whether or not to merge the two texts.

13. Mr. SADI said that, for practical purposes, the text should be viewed as a revision that included all the salient points in the earlier version. It would thus be easier for people to refer to it if they wished to acquaint themselves with the Committee's current position on article 7 of the Covenant.

14. Mr. NDIAYE said that he felt the practice hitherto adopted by the Committee had been satisfactory. The Committee had advanced gradually and had added observations in the light of its experience. He felt that the earlier version should be retained and the new one added to reflect the experience acquired, in order to allow new members to see how the Committee had evolved over time.

15. Mr. MYULLERSON said that it was necessary to take a broad view of the issue. The Committee had to decide what procedure to adopt with regard to its general comments as a whole. He endorsed Mr. Ndiaye's view as he, too, felt that it was valuable to retain the earlier general comment on article 7, with which he had no quibble. The Committee had acquired experience, and a new general comment was necessary to reflect that experience, although earlier general comments should be retained unless the Committee found them totally unsatisfactory.

16. Mrs. HIGGINS said that, if the Committee undertook to update the general comment, then extremely careful editing work was necessary. The Committee would have to decide whether to exclude anything already mentioned in the earlier general comment. For instance, she noted that part of paragraph 5 of

the recommendation before the Committee had been taken straight from the earlier general comment. She suggested that the Committee should consider the recommendation on a paragraph-by-paragraph basis.

17. The CHAIRMAN agreed that very careful consideration of the wording was necessary and suggested that discrepancies were perhaps attributable to the fact that the two general comments had been drafted in different languages. He saw Mr. Ndiaye's point regarding the historical interest of retaining the initial general comment, but pointed out that in any case it would always be available in the previous reports of the Committee. The Committee had to take a decision on the issue in order to allow the Working Group to advance in its task.

18. After a further exchange of views, in which Mr. ANDO, Mr. AGUILAR URBINA, Mr. NDIAYE, Mr. MYULLERSON, Mr. SADI and the CHAIRMAN took part, Mrs. HIGGINS suggested, on the assumptions, first, that the Working Group's draft had been intended as a single new general comment; and, second, that there was a feeling in the meeting that it should, rather, be treated as a supplement, that the following conciliatory procedure might be adopted. An introductory paragraph would be prepared indicating that the Committee wished to add to its earlier general comment 7 [16], which still represented its views. Next, as appropriate, the points mentioned in general comment 7 [16] would be elaborated upon as recommended by the Working Group and in the light of the Committee's discussion. Finally, a further section would be drafted, containing any new points endorsed by the Committee for inclusion as part of its general comment on article 7. In that way, she thought, it would be clear to future readers that the earlier general comment still stood; that certain of its points had later been elaborated upon; and that new points had been added. The actual task of textual restructuring following the exercise which she suggested could be left to the next working group; and the Committee might now proceed without further delay to the examination of the recommendation by the Working Group contained in document CCPR/C/42/CRP.2.

19. Mr. SADI submitted that, whatever the eventual form and content of the general comment on article 7, it should contain some acknowledgement of the existence of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as of the Committee against Torture.

20. Mr. ANDO recalled that, when the Human Rights Committee had addressed itself to article 26 of the Covenant, his attempt to have a reference to various existing instruments for the prevention of discrimination included in the general comment had not been successful; but some degree of conformity and dovetailing had been ensured by adopting the same basic definitions.

21. The CHAIRMAN said he saw no harm in Mr. Sadi's suggestion; it might be pointed out that the scope of the provisions in each of the instruments was not exactly the same, or that they were not interpreted in exactly the same manner. An additional paragraph in the general comment, acknowledging the existence of the Convention against Torture but making clear the specific competence of the Human Rights Committee in the matter, would appear to him to be in order.

22. He took it that the Committee wished to adopt the procedural suggestion made by Mrs. Higgins.

23. It was so decided.

24. The CHAIRMAN invited the Committee to proceed to a paragraph-by-paragraph examination of the recommendation by the Working Group.

Paragraph 1

25. Mr. MYULLERSON observed that no other general comment began by quoting the text of the article addressed. He considered that the paragraph might be deleted as superfluous.

26. The CHAIRMAN remarked that the quotation omitted what he regarded as the significant words "In particular". The article should be quoted in full, or not at all.

27. Mr. WENNERGREN pointed out that the content of the article was already reflected in general comment 7 [16]; if the text under consideration was to be a supplement, the first paragraph was indeed superfluous.

28. Mr. NDIAYE suggested that the first and second paragraphs might be combined, and said that he would favour including at least some indication of the substance of article 7. The contents of the first and second paragraphs of general comment 14 [23], concerning article 6, might serve as a model.

29. The CHAIRMAN agreed that the precedent referred to by Mr. Ndiaye was an interesting one, although the text there only amounted to a recapitulation of the earlier general comment. Noting that there seemed to be agreement that the first paragraph of the recommendation in its existing form should be deleted, he suggested that Mrs. Higgins might be invited to draft a new introductory paragraph referring to the Committee's previous general comment and perhaps adding some elaboration to reflect its present thinking.

30. It was so decided.

Paragraph 2

31. Mr. SADI, referring to the word "maltreatment" in the second sentence, suggested that the reference should rather be to the several kinds of maltreatment referred to in the article. He further suggested that the word "supported" in the third sentence should more properly read "complemented".

32. The CHAIRMAN observed that the use of "agissements" and "complétée" in the French text appeared to substantiate Mr. Sadi's suggestion; the problem was undoubtedly one of translation.

33. Mr. NDIAYE remarked on the inelegance and even incoherence of the French text of the first sentence of the paragraph.

34. The CHAIRMAN said that there, too, something seemed to have gone wrong in the transposition from one language to another during the earlier drafting work: an earlier draft in French which he had before him matched the English perfectly.

35. Mr. WENNERGREN observed that the paragraph addressed only the question of maltreatment, whereas article 7 referred both to maltreatment and to improper punishment. He consequently believed that a reference to "improper punishment" should be included.

36. After comments by Mr. AGUILAR URBINA, Mr. ANDO and Mr. MYULLERSON concerning the adequacy of the various language versions, the CHAIRMAN suggested that the Committee might adopt the paragraph on the understanding that care would be taken to ensure that all the acts prohibited by article 7 were properly alluded to, and that the different language versions were consistent.

37. It was so decided.

Paragraph 3

38. Mr. SADI asked whether it was in fact within the Committee's remit to comment on the principles of international law.

39. Mr. WENNERGREN said that the first sentence of paragraph 3 duplicated the previous general comment and could accordingly be omitted. The second sentence was both new and important.

40. Mr. NDIAYE said that it would be more logical to renumber the existing paragraph 4 as paragraph 3 and to insert the existing paragraph 3 at a later stage in the general comment.

41. Mrs. HIGGINS supported the proposed renumbering of the paragraphs. In regard to the second sentence, the Committee should make it crystal clear that the responsibility of a subordinate for his actions was one of the essential tenets of international law.

42. Mr. AGUILAR URBINA said that in the case of the region from which he came, where de facto regimes were not uncommon, it was most important to reiterate the principles of international law relating to the responsibility of a subordinate for his own actions.

43. Mr. WENNERGREN said that the paragraph, as currently worded, placed full responsibility for his own behaviour on a subordinate official, who might in that context be required to disobey an order; that would constitute a serious offence, at least under military law.

44. The CHAIRMAN said that there was in fact no contradiction. The subordinate could not plead justification, but that did not detract from the direct liability of the superior for issuing the order in the first place.

45. Mr. NDIAYE said that the word "justification" was in any case inappropriate in the context. It would be better to refer to "excuse" or "instigating circumstances".

46. Mr. MYULLERSON stressed the paramount importance of the second sentence. Whatever Mr. Wennergren might feel about the fairness of imposing such a responsibility on a subordinate, the authority for doing so was clearly set out not only in international law, but also in law enforcement officers' directives and in many domestic systems of law.

47. Mr. AGUILAR URBINA said that the same principle had been enunciated in the Convention on the Prevention and Punishment of the Crime of Genocide. To deviate from it would be tantamount to an attempt to amend existing international law.

48. Mrs. HIGGINS said that the principle of a subordinate's responsibility, which had been enunciated for the first time at Nürnberg, might appear to be harsh for subordinate officials, but to relax it in any way could bear even more harshly on the victims of those subordinates' actions. If necessary, the words "in accordance with the principles of international law" could be omitted, but the sentence must at all costs be retained.

49. Mr. WENNERGREN said that of course there could be no justification whatever for carrying out an order to commit genocide, but article 7 also dealt with maltreatment. Perhaps a less categorical text might be adopted, to allow a subordinate some discretion in regard to obeying an order from a superior.

50. Mr. AGUILAR URBINA said that the Committee was concerned to ensure that a subordinate could have no doubt as to the significance of what he was being ordered to do. There was no margin for discretion in such cases.

51. Mr. WENNERGREN raised the point of whether a prison officer in Great Britain would be justified in refusing to order a prisoner to slop out on the grounds that it constituted a degrading form of treatment.

52. Mr. MYULLERSON said that in his view it was inappropriate for the Committee to refer to practices in individual countries.

53. Mrs. HIGGINS said that she would be deeply disturbed if anyone should regard any of the practices referred to in article 7 of the Covenant as minor. None of the provisions of article 7 could be derogated from. Furthermore, there could be no question of differentiating between actions of the State and acts carried out in obedience to orders by individuals. Both categories were inadmissible under the Covenant.

54. The CHAIRMAN suggested that paragraph 3 should be retained, subject to redrafting and displacement to a later part of the general comment.

55. It was so decided.

Paragraph 4

56. Mr. NDIAYE said that there was not in fact any need for an enumeration of the acts prohibited by article 7 of the Covenant. An appropriate definition was contained in the Convention against Torture.

57. Mr. SADI suggested that it would be better to say "does not contain any specific definition" in the first line, since article 7 referred to "cruel, inhuman or degrading treament or punishment", a definition which in fact went further than that given in the Convention against Torture. It might also be better to end the paragraph at the beginning of the third line with the words "to draw up a list of acts that are prohibited", omitting the last three lines.

58. Mr. AGUILAR URBINA said that the Working Group had considered the possibility of including a reference to the Convention against Torture, but had rejected that idea on the grounds that the wording of the Covenant was more general and in consequence more appropriate. There was in fact no need for a wording as specific as that contained in the Convention against Torture.

59. Mr. ANDO, referring to the phrase indicating that, "the Committee does not consider it necessary ...", pointed out that a large majority of the Committee had in fact felt that it would be wrong to attempt to define such acts.

60. Mrs. HIGGINS said that two quite different concepts had become confused in paragraph 4, namely whether the Covenant contained a definition of acts of torture and whether the Committee should give examples of such prohibited acts.

61. Mr. AGUILAR URBINA said that Miss Chanet's first draft of the general comment had been aimed at defining the concept of what was prohibited under article 7 rather than enumerating categories of prohibited acts.

62. The CHAIRMAN suggested that paragraph 4 should be redrafted in the light of the Committee's comments.

63. It was so decided.

Paragraph 5

64. Mrs. HIGGINS wondered whether the last sentence of the paragraph should be retained. It was true that capital punishment was still permitted under the Covenant. However, the general tendency seemed to be towards the severe limitation and abolition of the death penalty.

65. She thought that it might be appropriate for members to consider whether they were sending a signal that the death penalty was approved so long as it was carried out in a humane manner and whether they were facing the reality that there was an entitlement to carry it out within the circumstances of article 6.

66. Mr. NDIAYE understood the point raised by Mrs. Higgins. However, he thought that an even more important issue was the fact that States which had legally maintained the death penalty sometimes applied it after the accused had been subjected to cruel, inhuman or degrading treatment. Therefore, he thought that the sentence should be retained.

67. Mr. AGUILAR URBINA agreed with Mr. Ndiaye. The Working Group had examined the question at some length and had wondered what signal the Committee could send. It must not be forgotten that the means of execution used in certain countries were degrading and inhuman. In many instances, even torture was utilized. The text to be drafted should indicate clearly that the Committee would like to see cases of capital punishment reduced and even eliminated.

68. Mr. SADI, referring to the third sentence, said that there was also a need to protect children who might be abused by their parents. The sentence should therefore be redrafted to read: "It is appropriate to emphasize in this regard that article 7 protects children, pupils and patients in teaching and medical institutions."

69. Mr. NDIAYE thought that the concept of pain, as referred to in the first sentence, should be qualified by inserting the word "acute" before "physical pain".

70. Mrs. HIGGINS said that if the Committee was to take the view that, the death penalty still being applied, it was important for members to indicate how it was to be carried out, it should consider amending the last sentence of the paragraph along the following lines: "When, moreover, the death penalty is applied in a State party, it must not only be strictly limited, as indicated in article 6, but it must be carried out in such a way as to cause the least possible physical and mental suffering. There may be circumstances in which the carrying out of the death penalty, while in principle permitted under article 6, would amount to cruel, inhuman or degrading treatment or punishment."

71. Mr. WENNERGREN remarked that, where the death penalty was applied by a State party, it should be carried out in the most humane manner and not, for example, by stoning or crucifixion.

72. Mr. SADI said that he did not see why the Committee had to mention the death penalty in connection with article 7 since the question was dealt with specifically in article 6. The theme of article 7 was different from that of article 6 and he therefore thought it preferable not to refer to the death penalty in reference to article 7.

73. Mr. FODOR said he thought that the message in the paragraph should be maintained. However, the existing reference was not sufficient. The Committee could not be neutral in that regard. The Covenant did not prohibit the death penalty but limited its applicability to the most serious crimes. Therefore, he felt that a reference to article 6 in that connection would be most appropriate.

74. Mrs. HIGGINS said, with regard to the views expressed by Mr. Wennergren, that she was not in favour of using examples in the drafting of texts. If the Committee gave examples of types of execution that were particularly intolerable in that they clearly violated the provisions of article 7, it would have to include examples of practices that caused mental suffering. In her opinion, it would be preferable to retain the existing wording of the last sentence of the paragraph and leave open the question whether a particular form of execution caused the least possible physical and mental suffering.

75. In her opinion, the Committee should also refer to the question of solitary confinement in the paragraph. After recalling the Committee's statement in the original general comment, she said that the Committee might wish to adopt a text along the following lines: "Solitary confinement should be used only when absolutely unavoidable. It should never be unduly prolonged or used in an arbitrary or vindictive way and must be controlled by an appropriate review process."

76. The CHAIRMAN suggested that paragraph 5 should be redrafted in the light of members' comments.

77. It was so decided.

Paragraph 6

78. Mr. SADI thought that there was no need to include a reference to principle 22 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, since it did not add much to the existing text.

79. Mr. NDIAYE said that, in order to avoid repeating the word "principle", it might be preferable to say "paragraph 22" instead of "principle 22".

The meeting rose at 5.45 p.m.